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ATTORNEYS FOR  
JULIA DURWARD, individually and  
as a member of Ginger Mountain Lodge LLC

UNITED STATES BANKRUPTCY COURT

NORTHERN DISTRICT OF CALIFORNIA

(San Jose Division)

In re:

EDDIE PASCUA BATOON and  
FLORA LLANES BATOON,

Debtors.

Case No. 23-50592

CHAPTER 7

**NOTICE OF MOTION TO DISMISS  
COMPLAINT PURSUANT TO  
FED.R.CIV. 12(b)(1) OR  
ALTERNATIVELY COMPEL  
ALTERNATIVE DISPUTE  
RESOLUTION AND STAY ACTION,  
DISMISS FOR IMPROPER VENUE  
PURSUANT TO FED.R.CIV. 12 (b)(3),  
OR DISMISS FOR FAILURE TO STATE  
A CAUSE OF ACTION PURSUANT TO  
FED.R.CIV. 12 (b)(6)**

Hearing Date: October 31, 2023

Hearing Time: 1:30 p.m.

Hearing Location:

Courtroom 9

Via Video/Teleconference

Hon. Stephen L. Johnson

**Adversary Proceeding No. 23-05022**

EDDIE PASCUA BATOON and  
FLORA LLANES BATOON,

Plaintiffs,

v.

JULIA DURWARD, as an individual and  
Member of Ginger Mountain Lodge LLC,  
and DOES 1 TO 10,

Defendants.

1 TO THE HONORABLE STEPHEN L. JOHNSON AND PARTIES IN INTEREST:  
2 NOTICE IS HEREBY GIVEN THAT JULIA DURWARD, individually and as a member of Ginger  
3 Mountain Lodge LLC (“Durward” or “Movant”) moves to dismiss the Complaint (Doc#1)  
4 pursuant to Fed.R.Civ. 12 (b)(1) or alternatively compel alternative dispute resolution and stay  
5 action, to dismiss for improper venue pursuant to Fed.R.Civ. 12 (b)(3), or dismiss for failure to state  
6 a cause of action pursuant to Fed.R.Civ. 12 (b)(6) (“Motion”)<sup>1</sup>.

7 **PLEASE TAKE FURTHER NOTICE** that the Motion is set for hearing before the  
8 Honorable Stephen L. Johnson, United States Bankruptcy Judge, to be held via Zoom  
9 video/teleconference in Courtroom 9, 280 S. First Street, San Jose, California 95113, on October 31,  
10 2023 on the Court’s 1:30 p.m. calendar.

11 **PLEASE TAKE FURTHER NOTICE** that all counsel, parties, and other interested persons  
12 shall consult each judges’ practices and procedures for instructions as to how to notice a hearing  
13 before that judge and information about how that judge conducts hearings (whether in-person, by  
14 video, or by telephone).

15 **PLEASE TAKE FURTHER NOTICE** that Local Bankruptcy Rule 7007-1(b) requires that  
16 any opposition to the Motion be filed with the clerk of the Bankruptcy Court and served upon  
17 counsel for the Movant at the address set forth in the upper left-hand corner of the first page hereof  
18 not later than fourteen (14) days prior to the hearing date.

19 **WHEREFORE**, the Movant respectfully requests that the Court enter an order:

- 20 (1) dismissing Plaintiff’s complaint;  
21 (2) compel alternative dispute resolution and stay action; and  
22 (3) granting such other and further relief as the Court deems just and proper.

23 Dated: August 28, 2023

24 LAW OFFICE OF WILLIAM J. HEALY  
25 /s/ William J. Healy  
26 William J. Healy  
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<sup>1</sup>“Fed.Rules.Civ.Proc.”, of “Fed.R.Civ.” or “FRCP” means the Federal Rules of Civil Procedure.